

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57335; File No. SR-NFA-2007-05)

February 14, 2008

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments, as Modified by Amendment No.1 thereto, to the Interpretive Notice Regarding Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-7 thereunder<sup>2</sup>, notice is hereby given that on November 30, 2007, the National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. On December 19, 2007, NFA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”).

NFA, on November 30, 2007, submitted the proposed rule change to the CFTC for approval and invoked the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”).<sup>3</sup> The “ten-day” provision permits NFA to make any rule changes or amendments effective ten days after receipt by the CFTC unless, within those ten days, NFA requests review or approval by the CFTC or the CFTC notifies NFA of its intent to review the filing. By letter dated December 11, 2007, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 21(j).

<sup>4</sup> See Letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, General Counsel, NFA (Dec. 11, 2007) (“Letter”).

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Text of Rule Change

INTERPRETIVE NOTICES

NFA COMPLIANCE RULE 2-4:  
MISUSE OF TRADE SECRETS AND PROPRIETARY INFORMATION

National Futures Association ("NFA") Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. Over the years, NFA's Board of Directors ("Board") has provided guidance on certain issues to ensure that Members and Associates understand their responsibilities to observe just and equitable principles of trade and to act honestly, fairly, and in the best interests of customers.

Compliance Rule 2-4 prohibits Members and Associates from knowingly obtaining or seeking to obtain another Member's or Associate's confidential information or trade secrets without that person's permission. It also prohibits Members and Associates from knowingly or recklessly misusing confidential information or trade secrets in their possession. Although that rule does not seek to regulate business disputes between Members or extend beyond their commodity futures activities, it does reach conduct that could potentially harm futures customers.

Conduct that may violate Compliance Rule 2-4 includes:

- Misusing sensitive personal information, such as a Social Security number, or purposefully or recklessly violating the firm's privacy policy;
- Disclosing customer orders prior to execution (except as permitted by exchange rules); or

- Obtaining or attempting to obtain information disclosing a CTA's historical trading positions without the CTA's permission.

These are merely examples of conduct that could potentially harm customers. Any Member or Associate that knowingly obtains or seeks to obtain confidential information or trade secrets of another Member or Associate without that person's permission or that knowingly or recklessly misuses trade secrets and/or proprietary information in the conduct of its commodity futures business violates Compliance Rule 2-4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Section 15A(k) of the Exchange Act<sup>5</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.<sup>6</sup> The revised

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<sup>5</sup> 15 U.S.C. 78q-3(k).

<sup>6</sup> 15 U.S.C. 78q(b)(11).

interpretive notice applies to all NFA Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).

NFA Compliance Rule 2-4 requires NFA Members and Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. The notice makes clear that NFA Members and Associates violate NFA Compliance Rule 2-4 if they knowingly obtain or seek to obtain another NFA Member's or Associate's confidential information or trade secrets without that person's permission, or knowingly or recklessly misuse confidential information or trade secrets in their possession when these activities may harm futures customers. The amendments to the notice make technical changes that do not affect the substance of the interpretive notice.

## 2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act. Section 15(A)(k) requires NFA to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in connection with security futures products. The proposed rule change accomplishes this by prohibiting the misuse of nonpublic information.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The interpretive notice should, however, prevent NFA Members from using illegitimate means to gain a competitive advantage when those means could harm futures customers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NFA, on November 30, 2007, submitted the proposed Interpretive Notice entitled "NFA Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information" to the CFTC for approval and invoked the "ten-day" provision of Section 17(j) of the CEA.<sup>7</sup> The CFTC notified NFA of its determination not to review the proposed rule change.<sup>8</sup> The proposed rule change became effective on December 11, 2007.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, could have summarily abrogated the proposed rule change and required that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Exchange Act.<sup>9</sup>

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<sup>7</sup> 7 U.S.C. 21(j) (2002).

<sup>8</sup> See Letter, *supra* note 4.

<sup>9</sup> 15 U.S.C. 78s(b)(1).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act.

Comments may be submitted by any of the following methods.

##### Electronic Comments:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NFA-2007-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NFA-2007-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

office of the NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NFA-2007-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(75).